

Patrick Cavanna March 5, 2014

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HEALTHY ADVICE NETWORKS, LLC,)	
)	
Plaintiff,)	
)	
-vs-)	No. 1:12 CV 00610
)	
CONTEXTMEDIA, INC.,)	
)	
Defendant.)	

The deposition of PATRICK CAVANNA, taken
before Lydia B. Pinkawa, CSR and Notary Public,
pursuant to the Federal Rules of Civil Procedure for
the United States Courts pertaining to the taking of
depositions, at 25th Floor, 222 North LaSalle Street,
Chicago, Illinois, commencing at 1:22 p.m., on the
5th day of March, 2014.

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1 PRESENT:

2 FROST BROWN TODD, LLC
3 By MR. AARON M. BERNAY
3300 Great American Tower
4 301 East Fourth Street
Cincinnati, Ohio 45202
(513) 651-6831
5 abernay@fbtlaw.com

6 appeared on behalf of plaintiff,

7 SIDLEY AUSTIN, LLC
8 By MR. RICHARD J. O'BRIEN and
MS. JESSICA JOHNSON
9 One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7283
10 robrien@sidley.com

11 appeared on behalf of defendant.
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I N D E X

WITNESS

Patrick Cavanna

EXAMINED BY

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Mr. Bernay

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1 PATRICK CAVANNA,
2 having been first duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BERNAY:

6 Q Good afternoon.

7 A Hello.

8 Q Do you go by Patrick or Pat?

9 A Any one you want. Patrick, Pat is fine with
10 me.

11 Q I'm Aaron Bernay. I represent Patient Point,
12 formerly known as Healthy Advice Networks in this
13 lawsuit. We met a few minutes ago and commiserated
14 about Tony Romo off the record. But I want to start
15 by asking you this afternoon, have you ever been
16 deposed before?

17 A I have not.

18 Q Ever given prior testimony in court?

19 A I have not.

20 Q Or any other forum?

21 A No.

22 Q So before we begin, I just want to go over a
23 few ground rules.

24 A Sure.

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1 Q I'm going to be asking you a bunch of
2 questions this afternoon. I'm going to assume that
3 you understand the question that I've asked and that
4 your answer is responsive to my question. If at any
5 time you don't understand the question, please stop
6 and let me know and I can rephrase it.

7 A Okay.

8 Q Can we agree to that?

9 A Yes.

10 Q It's important that we don't talk over each
11 other so that the court reporter can take an accurate
12 record. So I just ask that you wait to answer my
13 question until I'm done asking it.

14 A Okay.

15 Q In addition, the court reporter can only
16 capture verbal responses. So no head shakes,
17 "mm hmm", none of that, all right?

18 A Got you.

19 Q And if you need a break at any point, please
20 let me know. I would ask that you just finish
21 answering the question pending before we break.

22 A Okay.

23 Q Any other questions about the process?

24 A No.

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1 Q Are you on any medications today that would
2 affect your ability to give full, complete and
3 accurate testimony?

4 A No, sir.

5 Q And are you presently under a doctor's care
6 for any reason?

7 A No.

8 Q Can you state your full name for the record?

9 A Patrick Justin Cavanna.

10 Q And what's your current address?

11 A 1950 North Lincoln Avenue.

12 Q And that's here in Chicago?

13 A Chicago, Illinois, yes, 60614.

14 Q And let's talk about education. Did you
15 finish high school?

16 A I did.

17 Q And where was that?

18 A Coppell High School.

19 Q And where is Coppell High School?

20 A It's in Texas.

21 Q And where did you attend college?

22 A Franciscan University of Steubenville in
23 Ohio.

24 Q And when did you -- did you complete a degree

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1 there?

2 A I did.

3 Q And what's that degree?

4 A Business.

5 Q BS in business?

6 A Mm hmm.

7 Q And what year was that?

8 A 2003.

9 Q Any other degrees?

10 A No.

11 Q Advanced degrees? A few additional
12 background questions. Have you ever been convicted
13 of a crime?

14 A I have not.

15 Q Have you ever sued anyone?

16 A I have not.

17 Q Have you ever been sued yourself?

18 A I have not.

19 Q So you're here today because of your
20 background at ContextMedia. When were you hired by
21 ContextMedia?

22 A I was hired in August of 2011.

23 Q And what were you doing before you came to
24 Context?

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1 A I was actually doing sales in Dallas.

2 Actually, I'm sorry. Sales in Washington, D.C. for a
3 company called Corporate Executive Board.

4 Q And how long were you in that job?

5 A I would say probably about seven months.

6 Q And what were you doing there?

7 A Doing sales for them.

8 Q Just cold calling?

9 A Yes, prospecting, you know, following up on
10 leads, trying to close deals.

11 Q What did you do before then?

12 A Before then, I was in Dallas doing sales for
13 a software company called SimCrest.

14 Q And how long were you there for?

15 A Eight months.

16 Q Again the same type of responsibilities
17 and --

18 A Yes.

19 Q And before SimCrest?

20 A Back in Washington, D.C., I was doing account
21 management for a company called ICREO.

22 Q And how long there?

23 A Two years.

24 Q And in terms of account management, what were

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1 you doing?

2 A I was in charge of, you know, handling
3 accounts, making sure they understood the software,
4 how to use it, that sort of thing.

5 Q And how did you happen to come to
6 ContextMedia?

7 A Well, I moved out to Chicago July of 2011.
8 I applied to two jobs, this one and Groupon, and I
9 got the offer from ContextMedia.

10 Q Why Chicago?

11 A You know what? It's because I hated D.C.
12 and I've always wanted to come out here, so I packed
13 my bags and came on out.

14 Q Where did you find that listing?

15 A I believe I found it on Indeed, if my memory
16 serves me correctly. It was either indeed.com or,
17 you know, one of the other, Monster or something like
18 that.

19 Q And when you joined the company, what was
20 your title?

21 A Member outreach executive.

22 Q And is that still your title today?

23 A Yes.

24 Q What did you do to prepare for today's

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1 deposition?

2 A I met with, you know, these two guys. That's
3 about it.

4 Q Apart from your counsel, did you speak with
5 anyone else about your deposition?

6 A No.

7 Q Did you review documents ahead of today's
8 deposition?

9 A Yes, I looked over a few e-mails.

10 Q Mostly e-mails?

11 A Yes.

12 Q Anything else besides correspondence?

13 A No.

14 Q So your title is member outreach executive.
15 what were you hired to do?

16 A To make sales.

17 Q And what were you selling?

18 A Our product, which is a waiting room
19 educational television.

20 Q And for ContextMedia do you sell anything
21 else besides the waiting room product?

22 A Now, currently?

23 Q Currently, now.

24 A Yes, we have another product that we're

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1 allowed to sell, too, or sell with.

2 Q And what's that product?

3 A It's the tablets in the exam rooms.

4 Q And how long have you been selling that
5 product?

6 A I would say probably October of last year.

7 Q And is that sold as kind of a package with
8 the waiting room TV?

9 A Yes, currently, you know, they can't get the
10 tablets unless they have the television. There are
11 some one off instances where we allow that, but it's
12 very rare.

13 Q And when you were hired, were you selling
14 primarily across two networks called RHN and DHN?

15 A Yes.

16 Q Anything else besides those two networks?

17 A No, not at that time when I first started.

18 Q And RHN is the Rheumatoid Health Network?

19 A Rheumatoid Health Network, correct.

20 Q And DHN is the Diabetes Health Network?

21 A Yes.

22 Q And as a member outreach executive, you were
23 charged with making sales, but what were your
24 day-to-day responsibilities?

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1 A Calling clinics in my territory and selling
2 them.

3 Q And have you always had a specific territory?

4 A It's changed. I mean, I can't remember
5 what -- I think it started out in California, I'd
6 sell that more. But it's changed.

7 Q And that territory is geographic?

8 A Yes, obviously. I mean, by state. Actually,
9 by ZIP code, sorry.

10 Q I wonder if you can kind of walk me through
11 your day as a member outreach executive. How much of
12 your day do you spend on the phone?

13 A Probably about 100 percent of the day.

14 Q Do you have one of those headsets?

15 A Yes.

16 Q Do you have a set number of calls that you're
17 supposed to make in a day?

18 A Not, I mean it's not, you know, written in
19 any rules that we have to make, you know, this number
20 of calls or anything like that, but yes, we tend to
21 target around 60 to 80 phone calls a day. That's a
22 pretty good day.

23 Q And are those, when you say 60 to 80, are
24 those completed calls where someone is answering on

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1 the other line?

2 A Sometimes. I mean, that would be a great day
3 if that happened. Sometimes they are, a lot of times
4 it's voice mails. It's a combination of those
5 things.

6 Q And besides calling, do you also have other
7 sales activities that you do, e-mailing, for example?

8 A Yes, I mean yes, communication, e-mails, fax.
9 That's the only thing I can think of off the top of
10 my head.

11 Q The same question here, do you have a set
12 number of e-mails you're supposed to send in a day?

13 A No.

14 Q Besides those three, e-mail, fax and phone,
15 are there other ways that you contact practices? Do
16 you go in person, for example?

17 A We don't -- well, conferences are one way.
18 And then if we're out at a conference and, you know,
19 I happen to call, that conference is in my territory,
20 I happen to call someone and I say I'm going to be in
21 town, then I would meet them at their office. But
22 other than that, no, we don't fly out and just go,
23 you know, to clinics door to door or anything like
24 that, no.

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1 Q You have gone on clinic visits before?

2 A Yes.

3 Q How often do you go on clinic visits?

4 A Not -- I mean, I can only remember like two
5 or three times.

6 Q That's over the last --

7 A Two and a half years.

8 Q -- two and a half years?

9 A Yes.

10 Q So how do you know who to contact?

11 A It's in our, we use this CRM called Sales
12 Force and they're automatically uploaded into that,
13 into our database. And there are reports built out,
14 you know, under our names. You go into that report,
15 a whole list of people to call.

16 Q Do you use Quickbase as well?

17 A We did use Quickbase, yes, sorry. Now we use
18 Sales Force.

19 Q So Sales Force is a successor to Quickbase?

20 A Right.

21 Q When did that switch happen?

22 A I don't remember 100 percent. I would say
23 probably September, August, maybe, of last year,
24 2013. I'm not 100 percent on that.

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1 Q And I understand that at some point RHN and
2 DHN became essentially ContextMedia Health, is that
3 right?

4 A Yes.

5 Q Before that happened, you were selling both
6 RHN and DHN, I assume?

7 A Correct.

8 Q Was there, I mean, were you selling more of
9 one than another? I mean, were you making more calls
10 for one than another?

11 A Well, when I first started it was days,
12 right. So Monday, Wednesday, Friday we would do DHN.
13 Tuesday and Thursday would be RHN. And then the next
14 week it would change, RHN Monday, Wednesday, Friday.
15 So it was like that. When I first started I would
16 say, I mean, 50/50.

17 Q And who determined the schedules?

18 A It was just kind of best practices from my
19 boss, Matt Garms. It wasn't really a set schedule.
20 Obviously if we had to do one call, we were allowed
21 to deviate.

22 Q And has Matt been your boss for the entire
23 time you've been at Context?

24 A My direct boss, yes.

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1 Q And he's also part of the sales team?

2 A Yes, he is.

3 Q Are you aware where these -- you're provided
4 with a list of practices. Do you know where that
5 list comes from?

6 A No. I know that they're coming from our
7 sponsors, but I don't know what sponsor is providing
8 those lists. I don't think I've ever really asked.

9 Q Just so I understand, because I've never seen
10 Sales Force's software, although I think their
11 building is across the river, so you're sitting in
12 front of a screen and you've got a list of, maybe
13 like a spreadsheet to open of practices you need to
14 call?

15 A No, it's in the CRM, so you can run reports,
16 you can filter out by different, you know.

17 Q And you're allotted a number of practices to
18 call each day, it just kind of trickles down to your
19 screen?

20 A Well, you determine that by, you know, for
21 instance, they all start out as open accounts, pull
22 from that account and based on the conversation, you
23 set an activity out for tomorrow so when you go in
24 tomorrow, you pull out your activities for today and

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1 that account's in there now.

2 Q Got you. Okay. So until someone claims
3 them, these accounts are just kind of open, their
4 status is open and then you follow up and make the
5 calls on a claim?

6 A Well, no. The open accounts are in each --

7 Q They're in your names to begin with?

8 A Yes. It's not just everybody can take
9 whatever.

10 Q When you call a practice, do you have a
11 script?

12 A No, I usually just, you know, go through
13 conversation. I don't have a script in front of me
14 that I'm reading off and that sort of thing. So no,
15 I don't have a script in front of me.

16 Q Did you ever have a script in front of you?

17 A No.

18 Q Even when you started?

19 A No, absolutely not, yes.

20 Q Does anyone use scripts?

21 A I think some of the new guys will create
22 their own just so they can feel comfortable. But I
23 mean, that usually, you know, after they get the hang
24 of it, I don't really see anybody sitting in front of

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1 their computer with a script there.

2 Q So your experience is that when member
3 outreach executives come through, they will sometimes
4 make their own script?

5 A I mean, I guess more of a guide for what to,
6 you know, how to approach and say hi to somebody and
7 how to find their way through the correct point of
8 contact.

9 Q I understand everything's been merged into
10 ContextMedia Health now, but do you still know if the
11 practice is more, let's say, diabetes focused or more
12 rheumatoid focused before you even pick up the phone?
13 Do you know what the practice specialty is?

14 A Yes, yes. It would say that in the Sales
15 Force.

16 Q That information is contained?

17 A Yes.

18 Q And despite the merger, are you still
19 primarily calling on diabetes and rheumatology
20 practices?

21 A Actually, no. I'm actually more focused on
22 primary care physicians now.

23 Q And that's a result of the kind of, I'm
24 calling it, it's not really just a merger, it's a

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1 consolidation of the two brands?

2 A I wouldn't say it was the result of that.
3 I think we just started, we must get a list and we
4 opened up, you know, a primary care network.

5 Q You've noticed a lot more primary care
6 clinics coming through?

7 A Yes.

8 Q So beyond that info -- so you'll know what
9 the practice specialty is. What else do you know
10 about the practice before you pick up the phone?

11 A I mean, you're talking about a cold --

12 Q A cold call.

13 A Cold call? Really, that's it.

14 Q So do you know if they have a competitor
15 product?

16 A No, no. You're talking about a cold call,
17 right?

18 Q A cold call, right.

19 A No, I wouldn't know.

20 Q When would you know if they had a competitor
21 product?

22 A If I talked to them and asked them or they
23 tell me.

24 Q Or if someone else in the organization had

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1 called before you as part of the notes?

2 A I didn't really come across that too many
3 times. I was one of the first sales guys there, so
4 there wasn't a lot of notes to look through.

5 Q So when you cold call a practice, what do you
6 say to get their attention?

7 A Well, I firstly, you know, introduce myself
8 and say I'm Patrick Cavanna from ContextMedia Health
9 and describe our service, we do the free flat panel
10 televisions and the conversation just kind of
11 naturally goes from there.

12 Q And if a practice says no, I'm not
13 interested, take me off your list, for example, what
14 happens then?

15 A I would try to keep the conversation going
16 and ask them why they're not interested.

17 Q And if you have situations where a practice
18 says we have a competitor and we're just simply not
19 interested, please take us off your list, for
20 example, do you remove the competitor from your CRM
21 database?

22 MR. O'BRIEN: Object to the form. You mean
23 remove the practice?
24

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1 BY MR. BERNAY:

2 Q To remove the -- I don't want to speak to two
3 meanings here, so I'll be clear. If a practice tells
4 you please take us off your list, do you take them
5 off the list and stop calling them?

6 A It depends. If I feel like I could talk to
7 them later, then I would just push them out for a
8 really long time.

9 Q What happens if a competitor tells you --
10 sorry, if a practice tells you they have a competitor
11 product? What do you do then?

12 A I say, oh, who are you going with?

13 Q And if they, let's say, tell you that they
14 have Healthy Advice or Patient Point, what do you say
15 next?

16 A I say tell me your thoughts on it.

17 Q And if the practice tells you we're happy
18 with the product, what do you say then?

19 A I would ask them have you sat down in front
20 of the screen and taken a look at it?

21 Q And if they respond yes and we're happy with
22 the product, do you continue to try to sell at that
23 point?

24 A To be honest with you, the majority of the

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1 times they say no, they haven't taken a look at it.

2 Q And you're saying that's true of Healthy
3 Advice or Patient Point?

4 A What's true?

5 Q That the practices haven't really looked at
6 the system that's in their office?

7 A I wouldn't say that for, you know, for all
8 the practices I've talked to that have Healthy
9 Advice. But the majority of the ones that I can
10 remember, yes, I mean, the office manager is so busy
11 that they don't have time to really look at the
12 screen.

13 Q Does Context have a list of practices that it
14 will not call back for any reason?

15 A I wouldn't say it was a new, you know, a
16 separate list. For instance, if we call a doctor and
17 they're deceased or retired, obviously we're not
18 going to call them back.

19 Q Right. Do you still use tags in the database
20 like unqualified?

21 A Do we still use them today?

22 Q Yes.

23 A Yes.

24 Q And what does unqualified mean?

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1 A They don't fit our, you know, criteria of
2 whatever it is that they qualify for the free
3 television. So for instance, doctor's deceased, he's
4 retired, you know, if that's the only doctor at the
5 practice, unqualified.

6 Q And if a practice has a competitor installed
7 and doesn't want to switch at that moment, is that
8 practice also unqualified?

9 A No.

10 Q What would you label that practice as?

11 A Objection.

12 Q And what's the procedure with objection
13 practices?

14 A I mean, there's no procedure.

15 Q Do you try to call them back later on?

16 A Yes, it depends. It depends. Sometimes we
17 don't.

18 Q And let's say that you get confirmation on a
19 sale, a practice wants to go with ContextMedia. What
20 happens next?

21 A Are you talking about to date, right now?

22 Q Well, has the policy or has the procedure
23 changed over time?

24 A I mean, there's a lot of things that's

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1 changed over time.

2 Q Let's go back, then, and start with when you
3 started with the company in August 2011.

4 A Okay.

5 Q Let's say a competitor, I'm sorry, a practice
6 tells you that they want to take you up on your offer
7 for a screen. What do you do next?

8 A So back in 2011 I would fax them or e-mail
9 them the sign up form and I would walk through it
10 with them.

11 Q So you'd have them on the phone --

12 A Mm hmm.

13 Q And you'd help them fill out the demographic
14 information?

15 A Mm hmm. Yes.

16 Q And we'll look at the form in a little while
17 and I'll ask you some questions about it then.

18 A Okay.

19 Q If you were switching out a competitor
20 product, what would you do?

21 A This is back in 2011?

22 Q 2011.

23 A I would have them actually fill out a switch
24 out form.

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1 Q And what is a switch out form?

2 A The switch out form is essentially saying
3 that their practice can -- allows us to switch out
4 the, whatever competitor is in that waiting area.

5 Q And is the switch out form required?

6 A If they had a competitor in there, when I
7 first started in 2011, yes.

8 Q And is that not the case today?

9 A Well, we don't, no, we wouldn't use a switch
10 out form now. That's not the -- there's a different
11 process.

12 Q So what's the process with competitors today?

13 A Today the clinic has to actually call whoever
14 that competitor is and have them take down the
15 television.

16 Q And when did that change come into effect?

17 A You know what? That I don't remember, I have
18 not the slightest clue when that took effect as far
19 as specific date-wise.

20 Q So you no longer use switch out forms?

21 A No.

22 Q And these forms were part of a switch out
23 package, is that right?

24 A What do you mean by switch out package?

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1 Q Well, I think I'll start by asking are you
2 familiar with the term switch out package?

3 A No.

4 Q So these -- a switch out form is essentially
5 like an authorization form, is that right?

6 A (Nodding.)

7 Q And what was your understanding of that form
8 when you started? What was the purpose of that form?

9 A For the clinic to allow us to switch the
10 television.

11 Q Did that form give ContextMedia the legal
12 right to come in and switch out a competitor product?

13 MR. O'BRIEN: Object to the form. You can
14 answer.

15 A I mean, I don't know as far as legal right.
16 I mean, to the best of my understanding it was a form
17 that allowed, that said that the clinic was allowed
18 to switch out the television.

19 BY MR. BERNAY:

20 Q Have you ever sold a practice by e-mail
21 alone?

22 A I don't recall.

23 Q It always starts with a cold call?

24 A Of course, yes.

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1 Q Were your calls recorded?

2 A No.

3 Q Were anyone else's calls ever recorded?

4 A No.

5 Q Was your productivity monitored in any way?

6 A What do you mean by monitored?

7 Q Was someone keeping tabs on the member
8 outreach executives in terms of how many phone calls
9 they were making a day, sales they were closing, et
10 cetera?

11 A We would have software that would record how
12 many calls we have. And we have a board up that says
13 how many sales, you know, we have or we've made up
14 till today. But I don't think, if it was being
15 monitored, I wouldn't necessarily use that term.

16 Q Who's looking at those numbers?

17 A Everyone, I would speculate. I mean, I
18 couldn't give you specific people, but it's out there
19 for anybody to see.

20 Q Is someone looking at those numbers with a
21 critical eye in terms of how much people are selling
22 or not selling?

23 A What do you mean by critical eye?

24 Q I guess I'm asking for more, kind of an

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1 oversight position. Like you report to Matt Garms,
2 you told me that, right?

3 A Mm hmm. Yes.

4 Q So is he looking at, you know, the day in,
5 day out numbers from the sales team?

6 A I don't know what he's looking for, but I
7 wouldn't have an insight as to what exactly he's
8 looking for. But I assume if it's a bad sales month,
9 it's pretty obvious to everyone.

10 Q I'm going to switch gears a little bit. I
11 want to ask you about your training.

12 A Sure.

13 Q What kind of training did you receive when
14 you joined Context?

15 A I don't recall specifically. It was, you
16 know, I know I was on the phone within day four. But
17 he would go over what to, you know, our product,
18 obviously, how to use Quickbase at the time, that
19 sort of thing.

20 Q When you say he would go over, who's he?

21 A Matt Garms.

22 Q And when you joined in August 2011, who else
23 was on the sales team with you?

24 A So Deven Tatum, Brok Vandersteen, Patrick

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1 Gerrity, Jordan Zmick. I believe that's it.

2 Q And Patrick and Jordan are no longer with the
3 company, is that right?

4 A Yes, correct.

5 Q Why did Patrick leave?

6 A I think he had another opportunity.

7 Q And Jordan?

8 A Jordan had another opportunity as well.

9 Q So what did you do to get up to speed on the
10 product that you were selling?

11 A Really, I mean, I listened to kind of what
12 Matt told me about the product, I checked out, you
13 know, our DVD loop, I guess, and kind of took it from
14 there.

15 Q And did you do some research on competitor
16 systems as well?

17 A Back when I started?

18 Q Mm hmm.

19 A No.

20 Q Was there a point in time when you did
21 research on competitor systems?

22 A No.

23 Q Did you know anything about the competitor
24 systems before you started selling?

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1 A Yes.

2 Q And how did you gain that information?

3 A Well, you know, we were provided with
4 marketing material.

5 Q Marketing material that Context produced?

6 A Yes.

7 Q And would those materials include side by
8 side comparisons?

9 A Yes.

10 Q And besides the marketing material, what else
11 did you consult, if anything, to learn about
12 competitor products?

13 A You know, by talking to people on the phone
14 that had the competitors up.

15 Q Did anyone, when you started did anyone tell
16 you anything about Healthy Advice's products?

17 A I don't recall. Maybe, yes.

18 Q Who would have?

19 A It would have been Matt.

20 Q Anyone else besides Matt?

21 A Maybe, you know, some of the other sales guys
22 that were on the phone. I don't really remember.

23 Q Besides the -- do you remember learning about
24 other competitors besides Healthy Advice?

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1 A Yes.

2 Q From the marketing materials?

3 A From that and from also, you know, talking to
4 clinics on the phone. You know, we're on the front
5 lines. We're talking about people who are sitting
6 right in front of the TV, so a lot of the times
7 that's where I would get, you know, a lot of the
8 stuff about these clinics and the other TV systems
9 that they had.

10 Q Besides the marketing materials that
11 ContextMedia produced, did you do anything, did you
12 review any other documents related to Healthy Advice
13 when you started or thereafter?

14 A I might have jumped on their web site.

15 Q And at any point in time did you watch a
16 video, did you watch a Healthy Advice loop?

17 A No.

18 Q Are you familiar with the competitor
19 intelligence folder that marketing maintained?

20 A I know that there was one. I wouldn't say I
21 was familiar with it.

22 Q Did you ever look at it?

23 A I don't think I did, to be honest with you.

24 Q From time to time were there lunch and learns

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1 organized at Context?

2 A There were a few, yes.

3 Q And what was the purpose of a lunch and
4 learn?

5 A I mean, really to talk about anything, you
6 know, how the day's going, how we're structuring our
7 day, you know, we would talk about competitors. I
8 remember going to three of them. I don't know if
9 there were any more than that.

10 Q All right, I'm going to show you a document
11 which I will mark as Exhibit 1, Plaintiff's Exhibit
12 1.

13 MR. O'BRIEN: Do what you want, but I would
14 recommend numbering the exhibits consecutively.

15 MR. BERNAY: Okay. Are you saying for the
16 next two weeks you want to number them
17 consecutively?

18 MR. O'BRIEN: If we go to trial, that might
19 be easier.

20 MR. BERNAY: Okay.

21 MR. O'BRIEN: What number?

22 MR. BERNAY: What number was that one? 5.

23 Q I would set aside the top e-mail. Do you
24 recognize this document?

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1 A I mean, looking at it now, yes, it looks
2 familiar.

3 Q Is this essentially what you received as a
4 new employee when you started?

5 A I don't remember if this was exactly it. To
6 be honest with you, I don't really remember.

7 Q Set aside that this is the exact version of
8 the same document. Did you receive a training manual
9 when you started?

10 A I believe I did. But like I said, I don't
11 really remember if I did or not.

12 Q If you turn -- there are some numbers on the
13 lower right-hand corner of these pages which we call
14 a production number. And if you'd turn to page 645A,
15 which corresponds to page 1, is the schedule that's
16 here similar to what your training when you started
17 at ContextMedia?

18 A I don't really remember the schedule for my
19 training. I mean, that was so long ago. This looks
20 like something I might have received.

21 Q But it's similar, you would agree, to what
22 you described earlier. There is a review of
23 Quickbase, is that right?

24 A I believe, yes, I believe Quickbase was on

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1 there. Yes, it says review Quickbase on this.

2 Q And was part of your day spent, at least if
3 you can recall, reviewing this manual?

4 A You know what?

5 Q Or a very similar version?

6 A Majority of the day was really spent in time
7 with Matt.

8 Q Did you listen in on sales calls with Matt?

9 A Not with Matt but, you know, other sales
10 guys, yes.

11 Q And when you listened in on sales calls, were
12 you actually listening in to the line and were you
13 just standing there in conference?

14 A Yes, I was listening in to the line.

15 Q If you turn to page 12 or 6469, is half that
16 page cut off on yours?

17 A Yes, I'm only seeing -- this is what I'm
18 seeing here (indicating).

19 Q We'll discuss the summation later. Then I'm
20 going to mark this as 18.

21 (Documents marked as Plaintiff's Group
22 Exhibit 18 for identification.)

23 Q I'm giving you the same thing, just a
24 different copy. It's just a clean copy of it.

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1 A Got you.

2 Q So is this the sign up form that you would
3 send to a practice when you first started after you
4 had landed the sale?

5 A Not after I'd landed the sale.

6 Q Would the practice -- well, the practice
7 agreed to go with ContextMedia and that's why you
8 were sending the form?

9 A No.

10 Q So you sent this form as a matter of course
11 before the --

12 A Yes, if they wanted more information.

13 Q You'd send them the sign up form?

14 A And along with other --

15 Q Materials?

16 A Yes.

17 Q And after they had indicated a willingness to
18 go with ContextMedia, then you'd walk them through
19 this form?

20 A Correct.

21 Q And if you notice down at bracket D, there
22 are, I guess seven sentences set apart with check
23 boxes. As part of that process walking through,
24 walking the practice through this form, did the

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1 practice have to sign off on each of these individual
2 statements?

3 A You mean check them?

4 Q Check them, yes.

5 A Yes.

6 Q And did you ever have a practice that refused
7 to sign one or more of those statements?

8 A No. Have I ever had a clinic refuse to sign
9 this if they wanted to sign up? Or check this, I'm
10 sorry.

11 Q No, I'm asking have you ever had a clinic
12 that has told you I don't want to sign, for example,
13 the monthly patient traffic estimate, let's say?

14 A You know, there's only been rare instances
15 that that's happened. And the rare instances that I
16 recall, you know, they would just sign it, you know,
17 sign their initial.

18 Q But they were supposed to sign all of these,
19 is that right, or put checks in all of these?

20 A Essentially, yes.

21 Q Was the form acceptable if they did not?

22 A I've had some instances where maybe there was
23 a check box that wasn't signed or checked and we went
24 ahead and did it anyways.

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1 Q If you turn to page 15 and 16, what are these
2 two pages?

3 A It looks like a list of competitors.

4 Q And do you recall seeing a comparison chart
5 like this when you started?

6 A Yes, I remember seeing this.

7 Q And did you have something like this sheet at
8 your work space in case you called and needed to
9 reference it?

10 A No. I mean, I don't remember, you know,
11 taping this up or anything like that.

12 Q Did you ever refer to something like this or
13 one of the comparison charts when you were calling a
14 practice if you knew they had a competitor?

15 A What do you mean by that?

16 Q Well, if a practice indicated that it had a
17 competitor, in order to discuss what features that
18 competitor had and how they compared to Context, did
19 you have a reference like this?

20 A I mean, we were provided this, you know, when
21 we started.

22 Q But if that came up in conversation, you
23 wouldn't use something like this, you would just --

24 A They would just, you know, give us --

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1 Q Free flowing conversation?

2 A Exactly, right.

3 Q And if you look on the Healthy -- I'm looking
4 at page 15 now.

5 A Okay.

6 Q If you look at, for example, the Healthy
7 Advice call, it says that their network is known as
8 Arthritis Care Network. You've certainly run into,
9 I'm sure, a lot of practices that have that network,
10 is that right?

11 A You know, I don't recall ever hearing of
12 Arthritis Care Network, no.

13 Q Did the practice tell you, they would say
14 that they have Healthy Advice?

15 A They would say that they had probably Healthy
16 Advice, yes.

17 Q And if you notice in the third column, it
18 says cancellation can occur after the system has been
19 installed for six months, requires two weeks' written
20 notice. What do you take that to mean?

21 A I mean, what do you mean by that, what do I
22 mean?

23 Q When you called and the practice told you
24 that they had Healthy Advice, did you ask them, did

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1 you ever ask how long they had had the system for?

2 A Yes.

3 Q Every time?

4 A I don't recall every -- I'm not sure if I
5 said that every time. It depends on, I guess, how
6 the conversation was going.

7 Q Did you tell the practice that they needed to
8 provide written authorization to Healthy Advice to
9 switch out?

10 MR. O'BRIEN: At what point in time are we --

11 BY MR. BERNAY:

12 Q When you started. I'll ask that question
13 again, actually. Around the time you started, did
14 you tell practices that they needed to provide two
15 week written notice to Healthy Advice?

16 A I didn't mention that. It was just like a,
17 like I said, the switch out form is really what I
18 sent them.

19 Q If you look at the final row there on this
20 column, in 30 minutes of programming, nine minutes is
21 dedicated to sponsor messaging. Did you ever
22 communicate to a practice that half of Healthy
23 Advice's loop was advertising?

24 A Based on what I heard from other clinics that

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1 had Healthy Advice, yes.

2 Q So other clinics told you that half of
3 Healthy Advice's loop was advertising?

4 A I mean, the ones that I remember, you know,
5 they said yeah, it's all ads.

6 Q Did you ever go to anyone within ContextMedia
7 and say, hey, actually this is wrong, it's got to be
8 at least half?

9 A I don't recall saying that.

10 Q And if you go to page 27, and this concerns
11 the competitor switch out process.

12 A Mm hmm.

13 Q It's hard to see this form, it's even a
14 little blurrier on this page, but do you recognize
15 this as the installation authorization that you would
16 send to practices?

17 A This is what it looks like, but again, I
18 can't read what it says.

19 Q I'm not going to make you read it. And
20 again, this is required for every time you switched
21 out a competitor?

22 A Correct, at that time.

23 Q At the time, right. If you turn the page to
24 page 28, there's a different procedure in place at

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1 the top of the page depending on whether the practice
2 is an Accent Health practice or not. Do you recall
3 there being a different procedure in place?

4 A With other competitors?

5 Q Mm hmm.

6 A You know what, I don't remember. Not to my
7 knowledge. I mean, from what I can recall, at that
8 time I believe it was, you know, all the same.

9 Q And today is there only one procedure?

10 A Yes, the procedure is, you know, have the
11 clinic call whoever that competitor is and get them
12 to take the television out.

13 Q So you don't recall going through a different
14 procedure with Accent Health?

15 A I don't remember that.

16 Q Do you know why there was a different
17 procedure?

18 MR. O'BRIEN: Object to the form. You can
19 answer.

20 A I wasn't aware that there was a different
21 procedure.

22 BY MR. BERNAY:

23 Q All right, how were you compensated as a
24 member outreach executive?

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1 A I have a salary and then I also get
2 commissions.

3 Q And what is the nature of that commission?

4 A What do you mean by that?

5 Q So you have a base salary and then how is
6 your commission calculated?

7 A The exact numbers or, I mean --

8 Q Are you compensated based on the number of
9 practices that you close?

10 A It's not contingent on -- I mean, we get a
11 commission on, you know, each sale that we bring in.

12 Q And what is that commission?

13 A I mean, it's changed. It depends on how
14 many, you know, qualified doctors there are. It
15 depends on a lot of things.

16 Q Okay. Besides qualified doctors, what does
17 your commission hinge on?

18 A What do you mean by that?

19 Q Well, you said it depends on a lot of things.
20 So what are some of those things?

21 A For instance, if a practice has more than one
22 waiting room, you know, we get more commission. Like
23 I said, if there's more qualified doctors, we get
24 more commission. But the commission structure has

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1 changed, you know, since I've started numerous times,
2 so I can't really tell you specifics.

3 Q How has the commission structure changed?

4 A Like I said, I mean, it's changed a lot.
5 I can't recall all the changes that's been made with
6 commissions.

7 Q Beyond commissions, are there other
8 incentives that are offered from time to time?

9 A Yes. For instance, if we're having, whoever
10 is having a good month, they get like movie tickets
11 or something like that, you know, sales contacts,
12 stuff like that.

13 Q Did your commission, would the amount of your
14 commission depend on if the sale was a competitor
15 switch out?

16 A I don't recall. I don't really recall.

17 Q Anything else that would factor?

18 A Off the top of my head I can't, I really, I
19 can't really say anything more about that.

20 Q I asked before if you had seen a Healthy
21 Advice loop. Have you seen Healthy Advice's contract
22 with its practices?

23 A No, I don't recall ever seeing a, you know, I
24 wasn't even aware that they had a contract with other

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1 practices.

2 Q Just to be clear, when I say contract, I'm
3 talking about an enrollment agreement. Have you ever
4 seen an enrollment agreement with, a Healthy Advice
5 enrollment agreement with one of its practices?

6 A I don't recall ever seeing one.

7 Q Did anyone ever tell you that the sales team
8 needed to focus on switching out competitors?

9 A I wouldn't exactly use those terms.

10 Q What would you say?

11 A I would say there were some times where,
12 you know, we would, I guess, try to switch out
13 competitors if we came across them. I mean, I don't
14 think those words have ever, you know, Matt's never
15 came to me and said I want you just focusing on a
16 specific competitor or competitors. I mean, it
17 was --

18 MR. BERNAY: This would be a fine time to
19 take a break if you want to take one now.

20 MR. O'BRIEN: Okay.

21 (A recess was taken, after which the
22 following proceedings were had:)

23 BY MR. BERNAY:

24 Q Before the break, we looked at the

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1 authorization form in this manual. And you don't
2 have to turn back. And you said you would use this
3 authorization form with switch outs. Did you use
4 that form with every competitor?

5 A When I started, to my recollection, yes.

6 Q Regardless if it was Healthy Advice or Accent
7 Health or Health Monitor, you'd always make sure you
8 had that form?

9 A I did.

10 Q Did you, besides Matt Garms, did you have
11 discussions about the competitor switch out process
12 with anyone else at ContextMedia?

13 A I don't recall.

14 Q Any discussions with Jeana Loewe?

15 A Yes, she had -- I don't exactly remember what
16 those discussions were, but I remember her correcting
17 me.

18 Q Correcting you about what?

19 A Not really -- just if she heard something
20 that, you know, maybe wasn't true, she would kind of
21 correct me.

22 Q And you mean she would overhear you saying
23 something that wasn't true?

24 A Maybe it was incorrect.

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1 Q But you can't remember what that was?

2 A No, I can't.

3 Q Did she approach you about it more than once?

4 A I don't recall the exact number, I mean how
5 many times she did.

6 Q Again referring to the competitor switch out
7 process, did you have any conversations with Jim
8 Demas about that process?

9 A Was this when I first started?

10 Q Yes, from the time you started onward.

11 A Till now?

12 Q Mm hmm.

13 A Yes.

14 Q What did you talk about?

15 A I don't, I mean, I don't recall specifics.

16 Q Was it directed to any competitor in
17 particular?

18 A What do you mean by directed?

19 Q Well, you were talking about switching out
20 Patient Point or Healthy Advice practices?

21 A I don't remember, you know, specifically.

22 Q Same question for Rishi Shah. Did you have
23 any conversations with Rishi about competitor switch
24 outs?

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1 A What kind of conversations?

2 Q Well, did Rishi ever tell you anything about
3 what you should be doing with a competitor switch out
4 or we're going to change our procedure, anything like
5 that?

6 A I guess I'm just not kind of understanding
7 the question. What exactly, could you kind of
8 explain more?

9 Q I mean, have you ever been part of any
10 discussion with Rishi Shah about competitor switch
11 outs?

12 A Yes.

13 Q And do you recall what that discussion was
14 about?

15 A Yes, I do.

16 Q What was it about?

17 A Well, I recall one instance where, you know,
18 Rishi had actually, you know, the procedure had
19 changed. I recall that conversation.

20 Q So he told you the procedure had changed?

21 A He would -- yeah.

22 Q And why was he telling you that?

23 A He told us that, you know, he just kind of
24 explained that now the correct procedure is to, you

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1 know, have the clinic reach out to Healthy Advice.

2 Q And was that in a meeting he told you this?

3 A I don't recall if it was a meeting.

4 Q Did he tell it to you personally or to others
5 as well?

6 A He told it to pretty much everyone that was
7 on the sales team.

8 Q Okay. And did he tell you why the procedure
9 had changed?

10 A I don't recall the exact reason why.

11 Q You don't remember?

12 A I remember that conversation being a long
13 time ago. There was a reason why but I was, you
14 know, really focused on the procedure has changed.

15 Q Did anyone on the sales team ask why suddenly
16 the procedure was changing?

17 A I don't know if anybody else did.

18 Q Is that the only conversation you can recall
19 with Rishi about competitor switch outs?

20 A I'm sure I've talked to Rishi about, you
21 know, competitor switch outs, but I don't recall that
22 being the only conversation.

23 Q Did you have any conversations with Shradha
24 Agarwal about the same topic, competitor switch outs?

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1 A Yes.

2 Q And what did you discuss with Shradha?

3 A That the authorization form is, you know,
4 it's a different process now.

5 Q Before the protocol where the process
6 changed, did you have any conversations with those
7 folks, you know, about how the company was going
8 about switching competitors?

9 A You know, to my recollection, I can't
10 remember.

11 Q There are certain things that you, as a
12 member outreach executive, should not say about
13 competitors in the sales pitch, is that right?

14 A In the actual sales pitch?

15 Q During a call. Were there things you were
16 not supposed to say to competitors?

17 A If they were --

18 Q I'm sorry, about competitors.

19 A Yes, obviously if they were untrue, we're not
20 allowed to say those things.

21 Q What were those things?

22 A I mean, you know, for instance, I wasn't
23 allowed to say, you know, you'll get a million
24 dollars if you switch out with us. That's obviously

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1 absurd. So yes, absurdly false things I was not
2 allowed to say, yes.

3 Q Do you recall any specific statements that
4 you were told not to make?

5 A Yes.

6 Q And what were those specific statements?

7 A This time frame was when I originally
8 started?

9 Q From the time you joined through --

10 A Yes, if they were, if someone had heard me
11 say that, for instance, you know, if it was all
12 advertising, don't say that. It's not true.

13 Q Did you say that at one point?

14 A I don't recall.

15 Q Do you recall someone told you not to say
16 that specifically?

17 A Yes.

18 Q And did they raise that issue with you
19 because they had heard you say it?

20 A If they raised that issue with me, then yes,
21 it was because I said an untrue statement. It wasn't
22 exactly that statement of, you know it's 100 percent
23 ads.

24 Q Did you ever tell a practice that if the

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1 practice signed an authorization form, that
2 ContextMedia would be authorized to remove the
3 competitor equipment?

4 A I wouldn't necessarily put it in those words.

5 Q What would you say?

6 A Here's the switch out form, sign it.

7 Q And how would you explain the switch out form
8 to the practice? Just sign this?

9 A I would just, you know, fax it to them and
10 somebody will be in contact with you. That's it.
11 Here's the switch out form, here's the sign up form.

12 Q You wouldn't explain why they had to sign the
13 switch out form?

14 A I would, you know, I recall there were some
15 instances where I would say this is allowing you to
16 give us authorization to, you know, switch their
17 practice, or switch the television.

18 Q And is that a true statement?

19 A What do you mean by that?

20 Q Well, did that form provide ContextMedia with
21 authorization to remove?

22 A To the best, I mean, to the best of my
23 knowledge, yes.

24 Q Shortly after you began working at Context,

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1 did you tell a practice that you switch out Healthy
2 Advice every day, meaning you personally?

3 A I don't recall saying me personally.

4 Q Did you switch out Healthy Advice every day?

5 A It seemed like we did.

6 Q But were you?

7 A Me, personally? No.

8 Q Do you know if anyone else made similar
9 statements about switching out Healthy Advice every
10 day?

11 A I don't know.

12 Q Around the time that you started, did you
13 tell practices that you had switched out hundreds of
14 Healthy Advice screens?

15 A I don't know if I used one hundred or
16 hundreds.

17 Q But a large number?

18 A I don't recall.

19 Q Had you switched out hundreds of Healthy
20 Advice screens around the time that you started?

21 A Me, personally? I don't recall me doing that
22 when I first started.

23 Q So no?

24 A Yeah, no.

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1 Q Have you told practices that half or
2 50 percent of Healthy Advice's loop is advertising?

3 A I recall saying that.

4 Q Is that a true statement?

5 A Based on what other clinics were telling me,
6 I found that to be true based on the information I
7 was given from other clinics.

8 Q When you made the statement that half of the
9 loop is advertising, did you tell people either on
10 the phone or in e-mail that you had heard that was
11 the case?

12 A That sounds like something I would say I
13 heard.

14 Q And is that a true statement?

15 A Based, like I said, based on what they would
16 tell me, I would assume that that was a true
17 statement.

18 Q Did you ever tell a practice that Context's
19 sign up sheet is not a contract?

20 A Yes.

21 Q Is that true?

22 A To my knowledge, we don't have contracts.

23 Q Will you allow a practice to become a member
24 without signing a sign up form?

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1 A No.

2 Q Did you ever tell a practice that they were
3 not legally obligated to do something or did you
4 ever -- let's stop there. Did you ever tell a
5 practice that they were not legally obligated to do
6 something?

7 A What do you mean, not legally obligated to do
8 something? Can you clarify what something was?

9 Q Well, did you ever tell a practice they
10 didn't have a contract with a competitor?

11 A Based on what I have heard from that
12 particular, from a particular clinic, you know, in
13 the past, yes, I mean, that sounds like something I
14 have said.

15 Q Did you ever tell a practice that you wanted
16 to upgrade their system?

17 A Yes.

18 Q Without identifying yourself as being from
19 ContextMedia?

20 A Well, I always start out the call saying I'm
21 Patrick from ContextMedia Health.

22 Q And do you tell the practice that you want to
23 upgrade their system?

24 A Yes.

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1 Q Did you ever tell a practice that during the
2 switch out process there was no need to notify
3 Healthy Advice?

4 A I might have recalled saying that back in,
5 you know, when I first started in 2011, yes.

6 Q Prior to the change?

7 A Prior to the change, yes.

8 Q Did you ever tell a practice that had a
9 competitor's system that they could switch to
10 ContextMedia immediately?

11 A I never said those words.

12 Q Did you ever tell a practice that
13 ContextMedia switches four or five Healthy Advice
14 screens a week?

15 A Yes, I recall saying that.

16 Q Is that true?

17 A It seems, I mean back then, yes, it seems
18 like we did a lot. It seemed like we did four or
19 five screens.

20 Q Did you ever tell a practice that
21 ContextMedia and Healthy Advice had a relationship
22 that meant the practice didn't have to contact
23 Healthy Advice about the switch out?

24 A I don't recall ever saying that.

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1 Q Did you ever tell a practice that Healthy
2 Advice and ContextMedia had an agreement?

3 A I don't recall saying that.

4 Q All right, we're back into documents. And
5 I'm going to first mark this first one as Exhibit 19.

6 (Document marked as Plaintiff's Exhibit 19
7 for identification.)

8 Q Just take a minute and read through this
9 e-mail.

10 A Sure.

11 Q So let me ask you, this is an e-mail to, I
12 assume a practice contact, right? And would this
13 August 16, 2011, would that have been pretty close to
14 your start date?

15 A Yes.

16 Q And is this typical of the kind of follow-up
17 e-mails that you would send to a -- actually, I
18 think, is this a fax?

19 A Yes, I believe it is because it's the
20 21818.776, so I think it's a fax, yes.

21 Q This is actually a fax sent via e-mail?

22 A Yes.

23 Q And so is this typical of the followup you
24 would do of a practice?

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1 A I mean, what do you mean by typical?

2 Q Well, after you, let's say, made an initial
3 call to the practice, would you as a matter of course
4 follow up with an e-mail attaching more information?

5 A After I talk to them, if they wanted
6 information, I would send more information.

7 Q And if we look at the body of the e-mail, it
8 says, "Hi, Joanna. Hope all is well. Here is the
9 sign out and switch out form. It's not a contract,
10 so you can fill out the sign up sheet and switch out
11 form and fax it back to me. Remember, it's
12 100 percent free, no contracts, no obligations."

13 So the authorization form or the sign up
14 form does place obligations on the practice, isn't
15 that right?

16 A To my knowledge, there's no obligation to --
17 are you talking about keeping the system for -- what
18 do you mean by obligation?

19 Q Well, the practice has to sign monthly
20 traffic affidavits, is that right?

21 A To the best of my knowledge, yes. I don't
22 really deal with members, you know, that whole --

23 Q That's member services?

24 A That world, yes.

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1 Q So what do you mean the language no
2 contracts, no obligations? What do you take that
3 language to mean?

4 A That means it's not a contract. There's no
5 obligations. They don't have to -- they can pretty
6 much cancel whenever they want without a penalty.

7 Q So if a practice cancels with Context,
8 Context will come out and take its screen and that's
9 that, no questions asked?

10 A If they request it, to the best of my
11 knowledge, yes, that's what we do is we'll come out
12 and take it down. But like I said, I don't really
13 deal with that day to day, so I can't really speak on
14 exact, you know, what happens if they do do that.

15 Q Let me put this aside and I'll mark the
16 following exhibit as 20.

17 (Document marked as Plaintiff's Exhibit 20
18 for identification.)

19 Q Take a minute to familiarize yourself with
20 this document.

21 A Okay.

22 Q So looking at the first paragraph, again this
23 is a blast fax, right? Or not a blast fax, but a
24 fax?

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1 A It's a fax to Andrea, nobody else. It
2 definitely wasn't a blast fax.

3 Q Right, on September 8, 2011. And you say,
4 "Hi, Andrea. Here's the sign up sheet and switch out
5 form for the Rheumatoid Health Network. Remember,
6 legally you are not actually tied to a contract with
7 Healthy Advice." what do you mean by that?

8 A From what I recall up until this point, the
9 clinics who I talked to, you know, prior to this
10 e-mail had mentioned to me that they don't have a
11 contract with Healthy Advice. So that's kind of what
12 I meant by that.

13 Q So you assume that this practice didn't have
14 a contract with Healthy Advice?

15 A Correct.

16 Q Or if they did, they weren't legally bound to
17 it?

18 A I assume that they didn't have a contract
19 with Healthy Advice.

20 Q But you actually had no knowledge of whether
21 or not they had one?

22 A I assumed based on the fact that I was told,
23 you know, by another clinic that they didn't have a
24 contract with Healthy Advice.

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1 Q And if you look at the next sentence, "I have
2 personally switched out about 35 screens in the
3 California area alone from Healthy Advice." Is that
4 true? Was that true at the time?

5 A You know, it seemed like it at the time.

6 Q But it wasn't true?

7 A I'm not sure. I'd have to go look back at
8 the numbers.

9 Q You'd only, I guess, been at Healthy Advice
10 for four to five weeks. Do you think it's possible
11 you could have switched out 35 screens in California
12 alone during that time?

13 A For four to five weeks, I mean, no.

14 Q How many do you think you may have switched
15 out in that time?

16 A I have no idea.

17 Q Could it have been less than five?

18 A It could have been less than five, it could
19 have been 20. Like I said, I would have to go back
20 and look at the numbers. It could have been 35.

21 Q All right, I'll ask you about another
22 document. We'll mark this as 21.

23 (Document marked as Plaintiff's Exhibit 21
24 for identification.)

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1 Q And again, just take a minute to look at this
2 e-mail. I'm going to focus your attention on the
3 second paragraph here. First, again this is a fax to
4 a practice, I assume again very close to your start
5 date. This is August 10, 2011.

6 A Mm hmm.

7 Q And the second paragraph says, "Again for
8 this to take place, we do have sponsors from diabetes
9 advocacy organizations to make this 100 percent
10 free." So is it true that, this is pertaining to the
11 DHN, is DHN solely supported by diabetes advocacy
12 organizations?

13 A Not solely supported.

14 Q There are pharmaceutical sponsors as well?

15 A Right.

16 Q Did you ever have practices ask you who your
17 sponsors were?

18 A Yes.

19 Q And what do you say?

20 A I tell them all the sponsors that come off
21 the top of my head.

22 Q And for DHN who are those sponsors, I guess
23 around the time you started?

24 A I mean, I remember Levemir, saying Levemir,

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1 American Diabetes Association. Those are the only
2 two I can recall off the top of my head at this
3 period. Kemper foot balm I recall.

4 Q Kemper foot balm? Based on your experience
5 did practices, you know, for the first year or so you
6 were at Context, did they want to know who Context's
7 sponsors were?

8 A You're talking about all the people that I
9 called in the year?

10 Q Mm hmm.

11 A I couldn't tell you all the people that I
12 spoke with in a year, everyone wanted to know.

13 Q I'm just asking generally. I mean, was it a
14 common question? It didn't have to be asked every
15 time, but was it a common question?

16 A What do you mean by common?

17 Q Do you recall several instances of practices
18 asking you who Context's sponsors were?

19 A In the first year, yes.

20 Q I know I'm moving through a lot of documents.
21 I'm going to show you what I've marked as Exhibit 22.

22 (Document marked as Plaintiff's Exhibit 22
23 for identification.)

24 Q Just again take a quick look at this. This

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1 is actually an e-mail, not a fax.

2 A Right. Okay.

3 Q If you look at the second paragraph, it says,
4 "We have over a thousand hours of content of the same
5 type of segments that we update on a monthly basis
6 for you." Was it your understanding that Context had
7 thousands of hours of content in October 2011?

8 A Yes, I mean -- yes.

9 Q And that's true?

10 A To the best of my knowledge, if I wrote this
11 in October 2011, then I obviously assumed that that
12 was true.

13 Q And looking further down this e-mail, you say
14 I've got a \$100 American Express gift card with your
15 name on it, too, right in time for the holidays if
16 you switch us out. If you are hesitant to switch us
17 both out, try just switching one out, at least
18 Healthy Advice, and see which one you like better."
19 First, I guess, any reason why you picked Healthy
20 Advice over Accent Health as the one switch out?

21 A Well, you know, I found it easier to switch
22 out Healthy Advice.

23 Q And why was that?

24 A Why was it easier to switch out Healthy

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1 Advice?

2 Q Mm hmm.

3 A Because I've heard clinics complain about
4 customer service, you know, their loop is very
5 repetitive, they had a lot of ads, a slew of other
6 reasons. If you compare, in my opinion if you
7 compare the two televisions, you know, it's kind of a
8 no brainer.

9 Q Was it easier to switch Healthy Advice than
10 Accent Health because Context would do it itself?

11 A I wouldn't say that that's the reason why it
12 was easier.

13 Q But it was a reason?

14 A No, I wouldn't say that that was a reason.

15 Q I want to turn back to the gift card. How
16 did gift cards work as part of the sales strategy?

17 A Back then we were allowed to give anyone a
18 hundred dollar gift card.

19 Q Any practice that expressed interest in
20 switching?

21 A That signs up.

22 Q That signs up, right, regardless of --

23 A It doesn't have to be a switch out, yes.

24 Q And when you say back then, were there

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1 periods of time when you didn't give out gift cards?

2 A Yes. You mean for clinics who signed up?

3 Q Yes.

4 A Yes.

5 Q So it was a promotion from time to time?

6 A It was just kind of an incentive that we
7 could offer.

8 Q And sometimes you would give less, sometimes
9 you'd give more?

10 A Yes, to my recollection, sometimes they were
11 \$50, sometimes they were \$100.

12 Q Or 200?

13 A You know, I think I did 200 once and I got in
14 a lot of trouble with it and that's the last time I
15 ever did that. Actually, I had to pay that out of my
16 pocket.

17 Q So it was otherwise contained?

18 A Yes.

19 Q Do you still do gift cards?

20 A Yes.

21 Q And is that a pretty constant thing or are
22 there some months you do it and some months you
23 don't?

24 A If they have a competitor, we're allowed to

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1 offer them a hundred dollar gift card, if they have
2 regular cable TV we're allowed to offer them a
3 hundred dollar gift card in some instances.

4 Q If they have regular cable TV, would you
5 switch out that TV?

6 A It depends.

7 Q And how long has it been the case that you
8 just incentivize competitor and cable switch outs?

9 A I don't recall the exact date.

10 Q But loosely?

11 A Loosely, maybe a year ago.

12 (Documents marked as Plaintiff's Group
13 Exhibit 23 for identification.)

14 Q Take a look at this e-mail. I'll direct your
15 attention to a few parts of this e-mail. This is an
16 e-mail to a Dr. Manoukian in California on
17 September 1, 2011. And if you look at the end of the
18 first paragraph, it looks like he's got Healthy
19 Advice. You say, "This does not surprise me in any
20 way as I have personally removed over 50 screens in
21 the California area from Healthy Advice who, like
22 you, were also turned away by the service,
23 professionalism and overall customer satisfaction
24 from this organization." Again here you're telling

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1 this practice that you've removed over 50 screens in
2 the California area alone from Healthy Advice. Is
3 that true?

4 A I would assume that that was true if I would
5 have wrote it.

6 Q Now, if you recall, earlier we looked at an
7 e-mail that was dated September 8, 2011, and you told
8 that practice that you had switched, so it's a week
9 later, you had told that practice you had switched
10 out 35 screens in California.

11 A Mm hmm.

12 Q So that's 15 less than you had represented
13 you had switched out a week earlier. So again your
14 testimony is that you had switched out 50 screens
15 from Healthy Advice customers who were turned away
16 from the company by, I guess it's lack of service,
17 professionalism and customer satisfaction?

18 A Yes, I mean, I guess I was under the
19 impression that that's how many I did.

20 Q And you say, looking at the second paragraph,
21 reading in the middle, "We pride ourselves in
22 customer satisfaction to the utmost" --

23 A Where? Okay, I've got you.

24 Q Second paragraph. "We pride ourselves in

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1 customer satisfaction to the utmost extent. We don't
2 just treat you like a customer and show you the
3 door." What do you mean by that?

4 A You know, I meant that we take care, we would
5 take care of you and that we wouldn't just not
6 contact you and leave you hanging.

7 Q And the implication there is that Healthy
8 Advice does show you the door?

9 A I don't think I was implicating that, you
10 know, in this sentence. I was just saying in
11 generalities we don't, you know, we wouldn't just
12 show you the door.

13 Q If you look at the third paragraph, looking
14 in the middle, you're comparing Healthy Advice and
15 Context and you say, "Our ads, which are all from
16 diabetes advocacy organizations, have the least
17 amount of air time in the industry." So is it true
18 that every ad on DHN was from a diabetes advocacy
19 organization?

20 A I believe what I meant by that in September,
21 I was under the impression that, you know,
22 pharmaceutical companies fell under that, I guess
23 category. I was under the impression that our ads
24 were for diabetes, therefore they would advocate, you

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1 know, being treated for diabetes. That's what I
2 meant by that statement.

3 Q So your understanding a month after you
4 started the job is that the pharmaceutical companies
5 that sponsored DHN were really advocacy
6 organizations?

7 A I guess I misunderstood what advocacy meant
8 at the time. But yes, I mean, I was under the
9 impression that we were for treating diabetes.

10 (Documents marked as Plaintiff's Group
11 Exhibit 24 for identification.)

12 Q So let me show you another document. This is
13 marked as 24. Take a minute to look at this one.
14 And again this is an e-mail to a practice, the date
15 is November 9, 2011, and this is a longer e-mail
16 string. It looks like the first e-mail is, if you
17 look on the second page, it's just kind of a
18 follow-up e-mail to a phone call?

19 A Mm hmm.

20 Q Does that look about right?

21 A Yes.

22 Q And the practice writes you back and says,
23 "I want to make sure that we will not be penalized by
24 Healthy Advice if we decide to switch. Do you know?"

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1 And you respond, "Hi, Valerie. I switch about four
2 or five Healthy Advice screens a week." Was that
3 true in November 2011?

4 A It seemed like that was true at the time.

5 Q "I assure you that you, your doctor or anyone
6 in that facility are in no way contractually
7 obligated to pay Healthy Advice a single penny for
8 switching out their television at all." What was
9 your basis for making that statement?

10 A I assumed that they weren't obligated based
11 on what other, you know, the other clinics that --
12 what they were telling me, essentially.

13 Q So other clinics were telling you that they
14 were not liable to Healthy Advice at all?

15 A They just said that they didn't have a
16 contract.

17 Q And of course, you don't know if this clinic
18 has a contract with Healthy Advice?

19 A No, I don't know if they -- I was under the
20 assumption that they didn't.

21 Q You were under the assumption, but did you
22 ask?

23 A I mean, I don't recall the specific
24 conversation. Yes, I was under the assumption that

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1 they didn't have a contract.

2 Q You say, "I have personally switched out
3 approximately 97 facilities since I have started here
4 and not one of them has ever had to pay any penalties
5 whatsoever." And when you say 97, that's a fairly
6 precise number. How did you arrive at that number?

7 A You know, I'd have to go look back at the
8 numbers, but it seemed like that's what we were
9 doing.

10 Q And you say in the second paragraph, "It is
11 actually against the law to charge you for canceling
12 any type of educational content provided to you for
13 free by an organization, whether it's a TV, a
14 magazine or pamphlets." What is your basis for
15 making that statement?

16 A I heard this from another clinic. They told
17 me that -- they told me that.

18 Q Did you do anything to verify that it's
19 against the law to charge for canceling educational
20 content?

21 A I don't know.

22 Q You continue, "We adhere to those rules as
23 well and we are very transparent about it. If you
24 decide you don't want us any more at any time, it's

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1 as simple as an e-mail to me to say, hey, Patrick,
2 take it down, we don't want it any more and we will
3 do it with no questions asked and there is no
4 penalty." Is it true that if a practice called -- if
5 you went back to the office today and a practice
6 called and said take down our screen, you would say
7 when can we schedule a tech to come out and do it?

8 A Yes, if someone called me today and expressed
9 their frustration and we don't want it any more.

10 Q Did you try to save the practice?

11 A Sometimes.

12 Q Not always?

13 A It depends on how mad they were. It depends
14 on if they were mad or if they absolutely didn't want
15 it. I mean, you can tell on the phone if you don't
16 want to answer any questions, or you don't want to
17 ask any questions.

18 Q So if someone called today and requested you
19 to take down their screen and you've done it or
20 you're going to schedule it?

21 A I wouldn't personally schedule it.

22 Q But no questions asked?

23 A Like I said, I mean, it depends. I mean, if
24 the conversation is going well, I'd ask questions.

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1 If it's not, I wouldn't.

2 Q All right, I show you one more e-mail.

3 (Document marked as Plaintiff's Exhibit 25
4 for identification.)

5 Q Just take a minute to look at this e-mail.
6 So this is an e-mail dated May 16, 2012 concerning
7 RHN to a, someone named Evelina in a practice. And
8 the second paragraph says, "Evelina, just as I had
9 mentioned, we are switching out Healthy Advice TV's
10 at an astounding rate. Just last week we did 23
11 switch outs in the L.A. area alone." Is that
12 possible?

13 A It's, I mean, like I said, I'd have to go
14 back and look at the numbers, but it's certainly
15 possible.

16 Q Did you actually switch out 23 Healthy Advice
17 televisions in the L.A. area in early May 2012?

18 A Did I? I don't recall.

19 Q Did the company?

20 A I couldn't answer that, you know, without
21 having to look at the numbers. If I wrote it down
22 here, I mean, it would seem that we were.

23 Q And what would you do to look at the numbers
24 to confirm that?

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1 A You know, I didn't really look at numbers to
2 confirm that.

3 Q I mean, today if you wanted to look at the
4 numbers to confirm that you had switched out 23
5 practices in Los Angeles alone in one week, what
6 would you do?

7 A You know, that instance wouldn't come up
8 today. I mean, there's no need for me to tell them
9 how many switch outs I did last week or anything like
10 that.

11 Q Who at Context would know if there had been
12 23 switch outs in Los Angeles in early May 2012?

13 A Anyone can go look back at the numbers.

14 Q And where are the numbers kept?

15 A I have no idea.

16 Q But someone keeps the numbers?

17 A You know, they're on the board.

18 Q Are they in Quickbase or Sales Force?

19 A I'm assuming there's a way in Sales Force
20 where you can find that. I don't know how to do
21 that.

22 Q Would Matt Garms know?

23 A I don't know.

24 Q Who would know? Don't know?

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1 A Don't know. who would know what?

2 Q Who would know if there had been 23 switch
3 outs in Los Angeles in early May 2012?

4 A I wouldn't, I mean, I wouldn't know who would
5 know that.

6 MR. O'BRIEN: Could we take a break?

7 MR. BERNAY: All right, we'll go for a break.

8 (A recess was taken, after which the
9 following proceedings were had:)

10 Q So before the break we went through a number
11 of e-mails, as you recall.

12 A Yes.

13 Q And I've got a few more to show you.

14 A Okay.

15 MR. BERNAY: We'll mark this as Plaintiff's
16 Exhibit 26.

17 (Document marked as Plaintiff's Exhibit 26
18 for identification.)

19 Q This is an e-mail from Silvia Velazquez to, I
20 guess it's MSE at ContextMedia, Inc. with the subject
21 quit snapshot of switchouts. It's dated January 11,
22 2012. Did you receive this e-mail?

23 A No, I don't remember. I mean, I wasn't
24 included on the e-mail.

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1 Q So you're not within the MSE distribution
2 list?

3 A No.

4 Q You'll note that she's telling the member
5 services team here we had 109 switch outs last year
6 in 2011. Of those, and she goes through the numbers,
7 Accent Health, 26 cable TV's, 64 Healthy Advice. Do
8 you have any reason to believe that those numbers are
9 incorrect?

10 A No, I don't have a -- I mean, if she sent
11 this out to the team, I wouldn't think that it was
12 incorrect.

13 Q And would Silvia be the one who kept this
14 information?

15 A I don't know if she did or not. Like I said,
16 I don't really have any insight into the member
17 services, what they do on a daily basis.

18 Q So if there are 109 switch outs in 2011, then
19 it's fair to say you probably did not switch out 97
20 facilities in the first three months that you were at
21 context?

22 A Based on this e-mail, yes.

23 Q So that statement is false?

24 A Based on this e-mail, yes.

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1 Q Do you have any other reason to believe that
2 you may have switched out 97 practices?

3 A Other than it seemed like that's what I did,
4 no, based on these numbers, no.

5 Q And likewise, you probably weren't switching
6 out four or five Healthy Advice screens a week?

7 A Did I say I switched out four to five Healthy
8 Advice screens a week?

9 Q Yes, in that same e-mail that we looked at
10 just before break, you told a practice that you
11 switched out four or five Healthy Advice screens a
12 week. I'm sorry, the other. 24.

13 A Yes, I mean, it seemed like that's what I was
14 doing at the time.

15 Q But that's a false statement?

16 A Based on these numbers, I mean, it seems like
17 it's a false statement.

18 Q And looking at Plaintiff's Exhibit 23 where
19 you say that you personally removed over 50 screens
20 in the California area from Healthy Advice, and that
21 would have been the first four weeks that you were at
22 Context, and all of them were turned away by the
23 service, professionalism and overall customer
24 satisfaction from Healthy Advice, that's also a false

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1 statement?

2 A Yes, I mean if you do the math based on
3 Silvia's e-mail, then yes, that could have been true.

4 Q And you have no independent basis to think
5 otherwise?

6 A What do you mean by that?

7 Q Do you have any basis to believe that this is
8 accurate?

9 A Which e-mail?

10 Q 23, the statement we're looking at, the 50
11 screens.

12 A Could you repeat the question again? I don't
13 really understand what you're asking.

14 Q Sure. So you're saying based on Silvia's
15 e-mail, this is probably a false statement?

16 A Yes, based on Silvia's e-mail, I mean, yes.

17 Q I'm asking do you have any other basis for
18 believing that it is not a false statement?

19 A Other than me assuming that that's what it
20 felt like I did at the time, yes.

21 Q And do you know how many, to date how many
22 practices have switched from Healthy Advice, slash,
23 Patient Point to Context?

24 A I don't know the exact number.

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1 Q Were you made aware by others at Context of
2 certain misrepresentations that were made to
3 practices?

4 A What do you mean by that?

5 Q Did anyone approach you about false or
6 misleading statements that were made by the member
7 outreach team to practices?

8 A To me, you know, if I said something that was
9 incorrect, yes, absolutely.

10 Q Do you recall what you said that may have
11 triggered a comment like that or a response?

12 MR. O'BRIEN: It's been asked and answered,
13 but you can answer if you know.

14 A Yes, I mean, things that were in fact not
15 true that I assumed were, you know, four to five, I'm
16 sorry, not four to five, but half ads, they don't
17 have a contract, I was told not to say that, you
18 know, numerous times.

19 BY MR. BERNAY:

20 Q So I'm going to direct you to Plaintiff's
21 Exhibit No. 10, which is somewhere in that stack.
22 And take a look at this e-mail. Is this one of those
23 times when you were corrected about a misstatement?

24 A Hold on one second. Can I read the e-mail

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1 here?

2 Q Sure. I'll walk through it with you.

3 A Okay.

4 Q This is an e-mail string that initiates with
5 Brok Vandersteen on March 27 and then you reply a few
6 minutes later and say -- this is about, the e-mail is
7 about Healthy Advice upgrades -- that it is, you're
8 saying it is still mostly general health, so your
9 ammo against them is really the same. 17 minutes of
10 content, the rest are ads on a 30 minute loop, no
11 video, very basic customization. It should still be
12 a lay-up. So you still think this is an easy,
13 Healthy Advice is an easy sell.

14 And then Jeana Loewe responds a few minutes
15 later and among other things she writes in kind of
16 bullet point 2, "Their stated advertisement time is
17 nine minutes, 30. Please do not say that they only
18 have 17 minutes of content and the rest is ads. This
19 isn't published and we cannot guarantee this to be
20 true. There are a number of different scenarios that
21 affect content time, including Advitos, inclusion of
22 their own practice messages, et cetera, et cetera."
23 And then you respond and say Jeana is right, nine
24 minutes of ads. Do you recall this correspondence?

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1 A Looking at it now, I recall e-mail. I mean,
2 I don't recall the exact mind frame that I was at
3 when I wrote this e-mail. But yes, looking at it, it
4 looks familiar.

5 MR. BERNAY: And I'll mark this as 27.

6 (Document marked as Plaintiff's Exhibit 27 for
7 identification.)

8 Q Take a minute to look at this e-mail. And
9 I'll just direct your attention to the beginning of
10 the e-mail. Again this is an e-mail I assume to a
11 practice dated April 4, 2012. You write, "Hi,
12 Laurie. Please show this information to Dr. Metyas.
13 We can customize the loop to specifically include
14 autoimmune conditions that Dr. Metyas treats. What
15 you are getting now with Healthy Advice is a 30
16 minute slide show that doesn't have any video, and
17 half of the 30 minutes consists of ads."

18 So a week earlier you had been told that
19 there are only nine minutes of ads, which is about
20 30 percent of the loop in Healthy Advice, and here
21 you're back to half. How did that happen?

22 A I must have made a mistake, you know, in
23 writing that.

24 Q And after this date, did anyone else comment

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1 to you about the amount of advertising in the loop
2 and your comments about the same?

3 A My comments are about the same.

4 Q I mean your statements.

5 A I mean, I don't recall specifically.

6 Q All right, you can put that aside. I'm going
7 to mark Plaintiff's Exhibit 28.

8 (Document marked as Plaintiff's Exhibit 28
9 for identification.)

10 Q It's the same practice, about a week later.
11 Take a look. This is an e-mail from you to Matt
12 Garms about the same practice we spoke about a minute
13 ago. And you write. "Notes from member services.
14 Silvia, this is kind of urgent. They have Healthy
15 Advice right now and they are scheduled to upgrade
16 the TV on Monday. We, of course, swooped in and told
17 her not to do it and to go with us. As I was talking
18 to her today, Healthy Advice called her and told her
19 that no one is allowed to touch the television except
20 for Healthy Advice, which obviously is a boldface
21 lie. I told her the Healthy Advice rep told her that
22 probably because she wants Laurie to keep the TV in
23 there for as long as she can."

24 So how do you know that the fact that no one

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1 can touch Healthy Advice's equipment but Healthy
2 Advice is a boldfaced lie?

3 A Because I was under the impression that that
4 wasn't true.

5 Q That anyone could remove Healthy Advice
6 equipment?

7 A The question again?

8 Q You were under the impression that anyone
9 could remove Healthy Advice equipment?

10 A No, I was under -- that's not what I said.
11 I was under the impression that what the rep told
12 Healthy Advice was not true.

13 Q And the rep told Healthy Advice that --

14 A The rep told the clinic.

15 Q Sorry. The rep told the clinic that no one
16 but Healthy Advice is allowed to remove their
17 equipment?

18 A Yes, I thought that was untrue.

19 Q And you never saw Healthy Advice's agreement
20 with its practices?

21 A No, I did not.

22 Q And you knew that ContextMedia had a
23 provision in its sign up form that said only
24 ContextMedia could remove ContextMedia's equipment?

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1 A I don't believe those are the specific words
2 on the agreement, but yes, there's something in
3 there, I believe in the contract, I think it was the
4 last bullet point that, you know, I don't exactly
5 recall the exact words.

6 Q I'll just, I'll tell you, "I agree not to
7 remove, relocate, modify, alter or disrupt any of the
8 RHN system components without prior consent from the
9 Rheumatoid Health Network." So you need our,
10 essentially you need ContextMedia's permission before
11 anything is touched?

12 A Yes, I mean what I get from that is they are
13 not allowed to, you know, whoever signs that is not
14 allowed to, without consent, touch their -- move
15 their equipment or take it down.

16 Q But you believe that's not the case for
17 Healthy Advice?

18 A Yes, I was under the assumption that, you
19 know, they didn't have a contract, so yes, I thought
20 the rep at the time was not being honest.

21 Q Did you ask anyone to confirm if that was the
22 case or not?

23 A Anyone --

24 Q Anyone within ContextMedia?

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1 A No, I was just under the assumption that, you
2 know, that wasn't the case.

3 Q I'm showing you, this is Exhibit 29. Take a
4 minute to look at that.

5 (Documents marked as Plaintiff's Group
6 Exhibit 29 for identification.)

7 Q This is an e-mail correspondence with someone
8 named Reneta or Renata Hawks at a practice. And she
9 asks you in the middle of the first page, sends you
10 an e-mail on May 8, 2012 asking, "Legal has a few
11 questions that it received yesterday I have to get
12 clarified by Healthy Advice. One is that it is
13 believed that I have to give a 60 day notice to
14 Healthy Advice. The second is that legal believes
15 that we should allow Healthy Advice to remove their
16 own equipment. will try to get to call today."

17 And you respond saying, "That sounds great,
18 Renata. I think we are moving in the right
19 direction. I will warn you if you try to have
20 Healthy Advice remove their own equipment, they will
21 stall until the cows come home. That's why we just
22 ship it back to them ourselves. You definitely do
23 not need 60 days' notification as we replace these
24 all the time." why were you concerned about the

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1 practice removing or having Healthy Advice remove its
2 own equipment?

3 A Based on my experience up until this point,
4 Healthy Advice was unresponsive, you know, when
5 somebody would call. At least that's what I was told
6 from other clinics.

7 Q You learned that from other clinics?

8 A Yes.

9 Q But you were concerned that if you let this
10 practice's legal department allow Healthy Advice or
11 at least consult Healthy Advice, that you might lose
12 the sale?

13 A I don't think I said anything to that regard,
14 you know. It doesn't say that I was thinking that or
15 said that.

16 Q But I'm asking you as you reflect back on it,
17 were you concerned about losing the sale?

18 A I don't believe I was, no.

19 Q And you're telling the practice that they
20 don't need 60 days' notification because Context
21 replaces these all the time? And is that right, the
22 practice is telling you that they may need to give 60
23 days' notification?

24 A Well, she's not telling -- it doesn't say

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1 here that she's telling me that. It says that she
2 believes that you have to give 60 days' notice and,
3 you know.

4 Q But your response is, well, we do this all
5 the time?

6 A Yes, that's what it says in the e-mail.

7 Q And just generally, was it a concern that
8 if -- this is before the process switch. Was it the
9 concern that if Healthy Advice was allowed to remove
10 its own equipment, that it could result in a lost
11 sale?

12 A No, that wasn't ever a concern of mine, you
13 know. The content speaks for itself, in my opinion.

14 Q Since you switched to this new procedure
15 about a year ago, have you lost sales, have you
16 personally lost a sale because of the requirement
17 that Healthy Advice perform the switch out? Or it's
18 now Patient Point.

19 A Very -- you know what? I can't recall that
20 ever being an issue. Typically, you know, if I tell
21 them they have to call them, they don't really have a
22 problem with that.

23 Q And I think I may have asked you earlier, but
24 was there a -- just to confirm, you don't know why

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1 there was a different protocol at one time for Accent
2 Health switch outs, is that right?

3 A I can't recall the reason, you know, the
4 exact specific reason.

5 Q But there was a different procedure, right?

6 A Yes.

7 Q I think what I'm about to show you now has
8 already been entered into --

9 MR. O'BRIEN: You want some help?

10 MR. BERNAY: Yes, I'm looking for, it would
11 have been around the last --

12 MS. JOHNSON: The last one was 17.

13 BY MR. BERNAY:

14 Q I'm going to show you what was marked
15 previously as Plaintiff's Exhibit 14. Have you had a
16 look at the e-mail?

17 A Yes, I remember this.

18 Q Do you recall this incident that's described
19 in the e-mail from Jeana Loewe at the bottom?

20 A Yes, I do recall this incident.

21 Q And what happened?

22 A You know, I basically asked -- what happened
23 in this specific e-mail that she's describing?

24 Q Mm hmm.

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1 A Basically I borrowed a badge from Eli Lilly,
2 I went up to the Accent Health booth, asked her, the
3 rep there what everything is about and she kind of,
4 you know, told me everything, handed me some material
5 and that's kind of what happened.

6 Q And Jeana's sending you this e-mail as an
7 FYI, is that right, about a day after it happened?

8 A I don't know if it was the exact day after it
9 happened.

10 Q A few hours?

11 A Yes.

12 Q Did anything come of this? Were you
13 reprimanded in any way?

14 A Yes, I was told very sternly not to do, you
15 know, not to do this again, it's not a testament to
16 our character as ContextMedia Health.

17 Q Who told that to you?

18 A Everyone that I talked to, upper management,
19 Jim, Shradha, Rishi, my boss Matt.

20 Q So multiple people came and spoke with you
21 about what happened?

22 A Oh, yeah.

23 Q And did you go back to that conference?

24 A This particular conference that was going on

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1 Monday?

2 Q Yes.

3 A No, no.

4 Q Besides kind of being talked to, anything
5 else come of it?

6 A I just remember having really serious
7 conversations with them to not ever do this again,
8 this was, you know, very serious and it wasn't a
9 matter to take, you know, lightly. And that, you
10 know, that was good enough for me.

11 Q Besides this incident, have you been
12 reprimanded or disciplined by the company for other
13 reasons?

14 A Yes, I have.

15 Q For what?

16 A Let's see. I mean, my boss Matt has, you
17 know, heard me say stuff over the phone that I
18 shouldn't be saying. If any of the senior
19 management, I recall, you know, if any of the senior
20 management walked by my desk and they heard me say
21 something, I recall having a conversation with them
22 about not saying that particular thing.

23 Q And I'll just pause you there. who was them
24 and --

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1 A Senior management.

2 Q Meaning Rishi?

3 A Rishi, Jim, Shradha.

4 Q They all spoke to you at the same time?

5 A I mean, I'm giving kind of a generality. No,
6 they didn't speak with me -- depending on who heard
7 me at the time, that's who would speak with me.

8 Q So this happened multiple times?

9 A I mean, it's definitely happened more than,
10 you know, five or six times.

11 Q And apart from being told not to say whatever
12 you were saying at the time -- and do you recall what
13 that might have been?

14 A I mean, it could be really anything. I mean,
15 if we were saying stuff that was, you know, wrong
16 about our competitor, if we were saying stuff that
17 was wrong about our content, they would correct me on
18 that. You know, if it was a training session with a
19 new employee, if I was being too hard on them or
20 saying, you know, something that I shouldn't say to
21 them, they would correct me, reprimand me on that.
22 I mean, two and a half years, yes, senior management,
23 Matt came down on me numerous times.

24 Q And were you also reprimanded at one point

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1 for handing out, I think you referenced it to a \$200
2 gift card?

3 A Yes.

4 Q Or other denominations of gift cards?

5 A Yes, \$200 specifically.

6 Q And were you reprimanded for offering gift
7 cards when there was no gift card promotion?

8 A I mean, yes, that would come out of my
9 pocket, yes.

10 MR. BERNAY: All right, I think that's what I've
11 got. Anything else?

12 MR. O'BRIEN: Signature reserved, no questions.

13 (WITNESS EXCUSED.)
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24

Patrick Cavanna March 5, 2014

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF OHIO
 3 WESTERN DIVISION

4 HEALTHY ADVICE NETWORKS, LLC,)
 5 Plaintiff,)
 6 -vs-) No. 1:12 CV 00610
 7 CONTEXTMEDIA, INC.,)
 8 Defendant.)

9
 10 I, PATRICK CAVANNA, being first duly sworn, on
 11 oath say that I am the deponent in the aforesaid
 12 deposition taken on March 5, 2014; that I have read
 13 the foregoing transcript of my deposition, consisting
 14 of pages 1 through 92 inclusive, and affix my
 15 signature to same.

16
 17 _____
 18 Patrick Cavanna

19
 20 subscribed and sworn to
 21 before me this _____ day
 22 of _____, 2014.

23 _____
 24 Notary Public

Patrick Cavanna March 5, 2014

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS.

3 I, LYDIA B. PINKAWA, CSR and Notary Public in
4 and for the County of Cook and State of Illinois, do
5 hereby certify that on March 5, 2014, at 1:22 p.m.,
6 at 222 North LaSalle Street, Chicago, Illinois, the
7 deponent PATRICK CAVANNA personally appeared before
8 me.

9 I further certify that the said Patrick Cavanna
10 was by me first duly sworn to testify and that the
11 foregoing is a true record of the testimony given by
12 the witness.

13 I further certify that the deposition
14 terminated at 4:07 p.m.

15 I further certify that I am not counsel for nor
16 related to any of the parties herein, nor am I
17 interested in the outcome hereof.

18 In witness whereof, I have hereunto set my hand
19 and seal of office this 12th day of March, 2014.

20

21

22

Notary Public

Patrick Cavanna March 5, 2014

MERRILL LEGAL SOLUTIONS
311 South Wacker Drive - Suite 300
Chicago, Illinois 60606
(312) 386-2000 (800) 868-0061

March 12, 2014

Mr. Patrick Cavanna
c/o Sidley Austin, LLC
One South Dearborn Street
Chicago, Illinois 60603
Attn: Mr. Richard O'Brien

Re: Healthy Advice vs. ContextMedia
No. 1:12 CV 00610
Deponent: Patrick Cavanna

Dear Mr. Cavanna:

The above referenced deposition has been transcribed and is ready for review, pursuant to the Rules of Court.

Please contact our office at your earliest convenience for an appointment to review the deposition transcript or you may contact counsel for a copy of the transcript for your review.

Upon failure to comply within 30 days, we shall forward an appropriate affidavit of noncompliance to counsel without further notice.

Very truly yours,

Merrill Legal Solutions

cc: Counsel of record 1p219292

MERRILL LEGAL SOLUTIONS
(800) 868-0061 (312) 386-2000

Patrick Cavanna March 5, 2014

CASE: HAN v. Context DATE TAKEN: March 5, 2014

DEPONENT: Patrick Cavanna

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(signed) _____ DATE _____

Reporter: Lydia B. Pinkawa

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